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The Honorable Sarah L. Cave  
Daniel Patrick Moynihan Courthouse  
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New York, New York 10007

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**VIA ECF**

Date  
March 14 2022

**Re: Monterey Bay Mil. Housing LLC v. Ambac Assurance Corp.,  
Case No. 1:19 Civ. 09193 (PGG) (SLC)**

Dear Judge Cave:

We write in advance of the discovery conference scheduled for Wednesday, March 16, 2022.

During the March 3, 2022 discovery conference, Plaintiffs' counsel advised that they were reviewing approximately 27,000 documents that had been collected from Clark Realty Capital, LLC ("Clark"), and that they would "work to get a projection to the defendants as soon as possible" as to when those documents would be produced. (March 3, 2022 Hrg Tr. 11:5-8). We have not heard from Plaintiffs on this subject since the conference. Nor have Plaintiffs produced any additional documents.

Separately, counsel to Clark promised to inform defendants whether Clark made any presentations to Congress or relevant regulators by March 3 or 4, 2022. (*Id.* at 19:3-5 (stating that he would "confirm that today or tomorrow")). We have not received any follow up from Clark on that subject. We also sent a letter to Clark's counsel dated March 7, 2022, attached as Exhibit A, outlining the specific documents and information that have been requested. We have not received a response to our letter.

Given the lack of responsiveness from both Plaintiffs and Clark, we expect that we will require the Court's assistance in addressing these issues.

Respectfully submitted,

*/s/ Scott S. Balber*

Scott S. Balber

Cc: All Counsel of Record (via ECF)  
Thomas A. Clare, P.C. (via email, [tom@clarelocke.com](mailto:tom@clarelocke.com))  
Daniel P. Watkins, Esq. (via email, [daniel@clarelocke.com](mailto:daniel@clarelocke.com))

Enclosure

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## **Exhibit A**



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By email

Date  
March 07 2022

Re: ***Monterey Bay Mil. Housing, LLC et al. v. Ambac Assurance Corp. et al.,***  
**S.D.N.Y. Case No. 1:19-cv-9193**

Dear Counsel:

As you know, this Firm represents Jefferies Mortgage Finance, Inc., Jefferies & Company, Inc., Jefferies LLC, and Jefferies Group LLC (collectively, the "Jefferies Entities") in the above-referenced action.

As promised during the discovery conference held before Judge Cave on March 3, 2022, we write to identify the specific steps we expect Clark Realty Capital, LLC ("Clark") to take to explain its response to the subpoena dated October 24, 2019 (the "Subpoena") served by the Jefferies Entities. Those steps are as follows.

1. Clark should provide the Jefferies Entities with a specific, detailed description of all steps taken by Clark to identify and collect documents responsive to the Subpoena including, but not limited to, the locations and/or repositories searched for potentially responsive documents, the custodians whose documents were collected, the date(s) of such collections, Clark personnel interviewed or consulted during the process, and any search terms utilized to identify responsive documents.
2. Clark should produce all documents and communications concerning the evaluation of potential lenders and the ultimate selection of GMAC Commercial Mortgage Corp. ("GMAC") as lender for the Military Housing Privatization Initiative ("MHPI") project at Presidio of Monterey and Naval Post-Graduate School in Monterey, California (the "Monterey Project"). These documents should include documents and communications concerning debt financing proposals submitted by GMAC, Bank of America, Bear Stearns, Royal Bank of Canada, and Saloman Smith Barney. To the extent Clark cannot identify such documents, we expect Clark to provide a detailed explanation of the steps that have been taken to search for such documents.
3. Clark should produce all documents and communications concerning Clark's evaluation of potential lenders (including any final, signed loan agreements) concerning any MHPI projects in

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Date  
March 07 2022  
Letter to  
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which it held an interest, including those which are not involved in the above-referenced action. Such projects include the MHPI projects at Fort Belvoir, Fort Irwin / Mofett Field / Parks Training Area, Fort Benning, and AMC East (MacDill Air Force Base). Clark should also produce copies of the final loan agreements that it entered into concerning these non-plaintiff MHPI projects.

4. Clark should produce all documents and communications memorializing Clark's relationship(s) with any financial advisor(s) engaged in connection with MHPI projects, including but not limited to CRC Capital Markets LLC (f/k/a Duxbury Financial LLC), and subsequent communications with the same concerning the evaluation of potential lenders for any MHPI project and/or the financing terms of any MHPI project. See Subpoena Request No. 20 (seeking documents concerning "whether any person or entity . . . offered or agreed to serve as a financial advisor or fiduciary" to any MHPI project).
5. Clark should produce all documents and communications exchanged between Clark and any investigator, prosecutor's office, or regulatory agency concerning the maintenance or habitability of grounds and facilities comprising the Monterey Project. This should include any document requests or other correspondence pursuant to which the documents contained in Clark's March 2, 2022 document production to the Jefferies Entities were submitted to Congress.

To the extent Clark contends that it has already turned documents responsive to the above-referenced categories over to Plaintiffs for production to the Jefferies Entities, we expect Clark and Plaintiffs to identify those documents and the Bates numbers for the same.

To the extent Clark withholds any documents of the attorney-client privilege or work product doctrine, Clark must provide a privilege log that (a) specifies the basis for non-production; (b) describes the nature and general topic of the document; (c) identifies the person or persons who prepared the document and, if applicable, any person or persons to whom the document was sent; and (d) specifies the date on which the document was prepared, transmitted, and/or received.

Please provide all responses and/or document productions responsive to the above requests by no later than March 14, 2022.

Regards,

Scott S. Balber

cc: All Counsel of Record (via email)